

STATE OF CALIFORNIA

DEPARTMENT OF INSURANCE

In the Matter of: Proposed adoption of the Insurance Commissioner's regulations pertaining to pure premium rates for workers' compensation insurance, the Experience Rating Plan, the Uniform Statistical Reporting Plan, and the Miscellaneous Regulations for the Recording and Reporting of Data to be effective on January 1, 2004.

FILE NUMBER RH 03031326

DECISION (As amended November 10, 2003)

Barely six months after I took office as insurance commissioner, I signed an advisory pure premium increase of 7.2% that became effective on July 1, 2003. This increase followed a previous 10.5% increase in pure premium rates that went into effect on January 1, 2003. In my July decision, I said,

“The continuing dramatic increase in the claims cost drivers (pure premium rates) must be a wake up call to the California Legislature. Without legislation stopping the escalating costs, the past increases together with the increase approved in this decision and those certain to occur in the future will quickly lead to meltdown of the workers' compensation system.”

On July 30, 2003, the Workers' Compensation Insurance Rating Bureau, my designated statistical agent, filed for yet another increase in average pure premium rates of 12% that would have been effective January 1, 2004. Meanwhile, we were working very closely with the Legislature to enact reforms to create substantial savings in the system. On September 30, 2003, the governor signed a package of bills that marked the beginning of what I hope is a thorough reform of our state's workers' compensation system.

This legislation has stopped the out-of-control growth in medical costs. After the reforms became law, the WCIRB filed for a decrease in rates instead of an increase. Upon careful consideration of the filing, Department of Insurance staff have proposed a decrease in pure premium rates of 16.6% due just to the reform legislation. Furthermore, staff proposed an additional decrease of 7.3% from the WCIRB's proposed rates due to a number of differences in methodology that are detailed in the Proposed Decision.

The most difficult reform item to quantify for rate making purposes is the effect of the introduction of medical treatment guidelines. At a hearing on November 3, 2003, the WCIRB

declared that instead of a single number, it would recommend a range, any part of which would be a reasonable estimate of the savings attributable to the medical guidelines. The range spanned from 0% or no savings to a savings of 2.5% of the total pure premium. At that hearing, an economist working for the Commission on Health, Safety, and Workers' Compensation (CHSWC) suggested three numbers, a low, middle, and high estimate of the savings attributable to the introduction of the practice guidelines. The low estimate was considerably higher than the high end of the WCIRB's range.

Department of Insurance actuaries have proposed a savings of 4.3% of total costs due to adoption of the medical treatment guidelines. While I have adopted all other items in the Proposed Decision, I believe that greater weight should be given to the savings for the guidelines. The judge who testified in this proceeding provided convincing evidence that the legal presumption afforded the guidelines is likely to be sustained. Because of this and other evidence in the record, I have augmented the decrease in indicated pure premium rates by an additional 1.8%.

With this change, my evaluation of the combined impact of all of the reforms is a decrease of 18% in the pure premium rate when compared to what would have been in place had the pending increase application been adopted. Rather than a 12% increase in rates on January 1, 2004, the pure premium rates in effect since July 1, 2003 will be decreased by 8.2% due solely to the reforms. (Percentage savings of individual elements do not add up to the totals shown because the application of each individual savings element reduces the cost basis to which the subsequent elements are applied.)

In addition to reform savings, staff proposed, and I accept, a further decrease of 7.3% from the WCIRB's proposed rates due to a number of differences in methodology that are detailed in the Proposed Decision.

Therefore, I hereby adopt a total decrease of 14.9% in the workers' compensation pure premium rates that have been in effect since July 1, 2003 (Percentage savings of individual elements do not add up to the totals shown because the application of each individual savings element reduces the cost basis to which the subsequent elements are applied.)

This results in an advisory pure premium rate level that is only 0.8% above the July, 2002 pure premium rates

It is important to understand that the Insurance Commissioner does not set the workers' compensation rates. Insurance companies are allowed by law to set any adequate rate they desire. However, part of the reform legislation this year was a provision that required insurers to file rates that include the savings that I determine are due to the reforms.. It was the clear intention of the Legislature that the cost savings enacted in 2003 be passed through to policyholders and not accrue to insurers' bottom lines.

Insurers that adopt the 8.2% or greater pure premium rate reduction with no additional changes or offsets will be granted an early effective date of January 1, 2004, for all filings received prior to that date, and the 30 day waiting period will be waived.

It would be foolish to rest on our laurels and assume that we're done with the problem. California's workers' compensation system is still inefficient and inequitable. Even with the reforms, costs are much too high and benefits distributed irrationally. Our employers and our workers deserve more. Our economy must not be hobbled by unreasonably high workers' compensation costs. We didn't get into this mess in one year and we won't get out of it with one year of reform. More needs to be done and I am committed to making sure that it happens.

We must also recognize that the 2003 reforms are not self-executing. In order for these savings to be realized, all the participants in the workers' compensation system must live up to their responsibilities. Insurance companies must train their claims staff in the use of the medical guidelines; doctors must follow the guidelines—and when they do they must be paid promptly.

Government needs to live up to its responsibilities also. The Legislature, in the special session that the governor-elect has indicated he will call, must enact cleanup legislation that deals with ambiguities and technical errors in the new law. This is essential for the new legislation to be carried out effectively, and to eliminate potential litigation. The Division of Workers' Compensation (DWC) must handle disputes efficiently and in a timely manner. That can only be done if the Division's budget is adequate to the challenge. The reforms that took up so much of the Legislature's time and energy in 2003 will not help employers if the DWC does not have enough judges and support staff to do the work.

I hereby adopt the attached Proposed Decision and Proposed Order of Hearing Officer Larry C. White as my Decision in the above-entitled matter, amended as noted above.

IT IS SO ORDERED THIS 10th DAY OF NOVEMBER, 2003

A handwritten signature in black ink, reading "John Garamendi". The signature is fluid and cursive, with a large initial "J" and "G".

JOHN GARAMENDI
Insurance Commissioner